HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.399 OF 2006

Between:

S.Vahede
. . .Appellant

AND

Sri Venkateswara Institute
of Medical Sciences and others
. . .Respondents

Counsel for the appellant :Shri V.Jagapathi

Counsel for the respondent No.1 : Shri P.Sarada

Counsel for the respondent Nos.2 to 6 : Shri Rama Rao Ghanta

Dated: 24th August, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

Dissatisfied with order dated 04.04.2006 passed by the learned Single Judge in Writ Petition No.26317 of 2005 whereby he quashed the promotion of respondent Nos.2 to 6 as Head Nurses, but gave liberty to the management of Sri Venkateswara Institute of Medical Sciences, Tirupathi, (for short 'the Institute') to make promotions in accordance with final seniority list dated 08.03.2006, the appellant has filed this appeal.

For appreciating the issue raised in the appeal in a correct perspective, it will be useful to briefly notice the facts.

In furtherance of selection made by the competent authority of the Institute in 1992, the appellant was appointed as Staff Nurse on 03.02.1993. Her appointment was regularized with effect from 02.02.1995. Respondent Nos.2 to 6 were appointed as Staff Nurses on 16/17.03.1993 and their appointments were regularized with effect from different dates ranging between 16.03.1995 and 05.05.1995. In 1998, the appellant and four other Staff Nurses filed Writ Petition No.16295 of 1998 with the complaint that the management of the Institute was making promotions without finalizing the seniority list of Staff Nurses. They also filed an application for stay of Circular No.C2/75/SVIMS/98, dated 30.04.1998. The same was registered as WPMP.No.19394 of 1998. By an order dated 16-6-1998, a learned Single Judge directed the Institute to finalise the seniority list within

four weeks. Thereafter, Personnel Manager of the Institute issued Circular No.C2/90/SVIMS/98, dated 20-10-1998 for circulating the provisional seniority list of Staff Nurses. In that list, the appellant's name was shown at Sl.No.29 and those of respondent Nos.2 to 6 were shown at Sl.Nos.44 to 47 and 49 respectively. However, the seniority list was not finalized for next seven years. This compelled the appellant to file Writ Petition No.15021 of 2005 for issue of a mandamus to the Institute to consider her case for promotion as Head Nurse strictly in accordance with the existing seniority list circulated on 20-10-1998. The same was disposed of by the learned Single Judge vide his order dated 8-8-2005, the operative part of which reads as under:

> "In view of the claim made by the petitioner with reference to the seniority list, dated 20.10.1998, which is admitted by the respondent as a provisional seniority list, which is in existence as on date, the respondent is directed to consider the case of the petitioner for promotion as and when the respondent is proposing to fill up the Head Nurses vacancies, in accordance with the said provisional seniority list."

Ignoring the aforesaid order of the learned Single Judge, the management of the Institute issued order dated 5-12-2005 promoting respondent Nos.2 to 6 as Head Nurses. The appellant challenged the same in Writ Petition No.26317 of 2005. She also filed WPMP.No.33823 of 2005 for staying the promotion of respondent Nos.2 to 6. By an order dated 28-12-2005, the learned Single Judge stayed the promotion of respondent Nos.2 to 6. The relevant extracts of

that order are reproduced below:

"On instructions Smt.Sarada, learned Standing Counsel for the 1st respondent submits that what the respondent appears to have followed while promoting the respondents 2 to 6, is the ranking by marks obtained by the respondents 2 to 6 during their selection as Staff Nurses. The petitioner and respondents 2 to 6 have not been selected at a single selection. They are products of different selections. In the circumstances and in the absence of any statutory authority for the procedure followed, the action of the respondents in considering the marks obtained at different selections, by candidates, for considering for promotion as Head Nurses appears to be patently irrational and arbitrary. Prima facie the promotions of respondents 2 to 6 as Head Nurses on the aforesaid basis, appears unsustainable.

For the aforesaid reasons, the proceedings dated 05-12-2005 promoting the respondents 2 to 6 as Head Nurses from the category of Staff Nurses is suspended. If the respondents 2 to 6 have already assumed charge pursuant to the proceedings dated 05-12-2005 they shall be reverted to the posts of Staff Nurses without prejudice to the right to be considered afresh along with the petitioner in accordance with any rational procedure followed by the 1st respondent.

The position of Head Nurse is a critical position in any medical institution and the 1st respondent is a super-speciality medical institution. The service grievance of the petitioner must give way to public interest. In the circumstances this order does not preclude the 1st respondent from making any temporary or incharge arrangements to fill up the existing

vacancies of Head Nurses until the 1st respondent chooses to follow any other rational method for filling up the post of Head Nurse."

In an apparent attempt to regularize the illegal promotions of respondent Nos.2 to 6, the management of the Institute issued list dated 8-3-2006 by describing it as final seniority list of Staff Nurses recruited in the year 1992 and placed the same before the learned Single Judge during the course of hearing of Writ Petition No.26317 of 2005. The learned Single Judge took cognizance of the grievance made by the petitioner, order dated 08.08.2005 passed in Writ Petition No.15021 of 2005 and annulled the promotion of respondent Nos.2 to 6, but at the same time, gave liberty to the management of the Institute to effect promotion in accordance with the final seniority list dated 08.03.2006. Simultaneously, liberty was given to the appellant to challenge list dated 8.3.2006.

By taking advantage of the liberty given by the learned Single Judge, the management of the Institute issued order dated 6.4.2006 re-promoting respondent Nos.2 to 6 as Head Nurses. The appellant questioned this action of the Institute by filing contempt petition, but failed to persuade the court to penalize the concerned authorities.

Shri V.Jagapathi, learned counsel for the appellant vehemently argued that list dated 08.03.2006 cannot be treated as seniority list because it does not have sanction of the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short 'the Rules'). He relied on Rule 33 (a) of the Rules, which postulates determination of the seniority by the date of first appointment of a person in service, category or grade, and argued that the so-called list dated 08.03.2006 prepared on the basis of the marks allegedly secured by the

candidates in the selection held in 1992 is liable to be ignored. Learned counsel pointed out that in the provisional seniority list dated 20.10.1998, the appellant's name was placed above respondent Nos.2 to 6, and argued that their inter se position could not have been altered without notice and without any rhyme and reason and, in any case, the management of the Institute could not have prepared final seniority list only for those who had been selected in 1992. Sri Jagapathi emphasized that the action of the management of the Institute to issue list dated 8.3.2006 should be treated as a fraud on the proceedings of the Court.

Smt. P.Sarada, learned counsel for the institute submitted that the recruitment made in the year 1992 was not regulated by statutory rules and that final seniority list has been prepared on the basis of the marks secured by the candidates. She, however, fairly conceded that list dated 8.3.2006 cannot be treated as one prepared as per the criteria specified in Rule 33(a) of the Rules. In reply to the Court's query, Smt. P.Sarada submitted that no discernible method appears to have been adopted for making recruitment of Staff Nurses in 1992. She, however, defended the promotions made vide order dated 6.4.2006 by arguing that this exercise was undertaken by the Institute keeping in view the seniority list dated 8.3.2006.

In our opinion, list dated 08.03.2006 cannot be treated as seniority list prepared in accordance with the statutory rules. A reading of Rule 33(a) of the Rules makes it clear that the criteria for determination of the seniority is the date of appointment to the service and not the marks secured in the selection. Therefore, if seniority list is to be drawn in accordance with Rule 33(a), the appellant is entitled to be placed above the private respondents because she was appointed earlier than respondent Nos.2 to 6.

The record made available by learned counsel for the Institute contains certain sheets on which marks have been awarded to the candidates. However, there is nothing in the said record from which it can be inferred that any merit list was prepared by the concerned authorities of the Institute. This inference is strengthened by the fact that the appellant had been appointed much before respondent Nos.2 to 6. It is beyond our comprehension that the appellant would have been appointed as a Staff Nurse in February, 1993 and respondent Nos.2 to 6 would have been appointed on 16/17.3.1993 despite the fact that they were adjudged more meritorious. Therefore, the so-called merit list, which is now reflected in the seniority list dated 8.3.2006 appears to be non-existent.

Notwithstanding the above discussion and observations qua list dated 08.03.2006 and the mechanism adopted by the management of the institute for preparing seniority list dated 08.03.2006, we are of the view that no effective relief can be granted to the appellant, because list dated 08.03.2006 is not under challenge in this appeal.

The argument of Shri Jagapathi that the Court should ignore list dated 08.03.2006 because it is not in consonance with the statutory rules cannot be accepted because it is settled law that in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot quash an order or proceedings which is not under challenge. It is also settled law that the Court cannot pass any order prejudicially affecting the right, interest or status of a person without giving him/her notice and opportunity of hearing. Therefore, list dated 8.3.2006 cannot be nullified unless the same is made subject matter of challenge and reasonable opportunity of hearing is given to the persons likely to be affected by quashing thereof.

The grievance made by Shri Jagapathi that the learned Single

Judge erred in taking into consideration the list dated 08.03.2006, which was produced during the course of hearing cannot be entertained for the simple reason that remedy for redressal of such grievance is by way of filing application for review.

In the result, the appeal is dismissed leaving the appellant free to seek review of the order passed by the learned Single Judge in Writ Petition No.26317 of 2005 or avail appropriate legal remedy by questioning list dated 08.03.2006 and consequential promotions of respondent Nos.2 to 6.

As a sequel to dismissal of the appeal, W.A.M.P.No.879 of 2006 filed by the appellant is disposed of as infructuous.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 24.08.2006

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